

Congress of the United States

Washington, D.C. 20515

February 8, 2022

Delivered via Email

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

We write to request that the U.S. Government Accountability Office (GAO) review the National Labor Relations Board's (NLRB or Board) efforts to resolve an error in improperly seating one of its members. On October 8, 2021, the NLRB notified Congress that Mr. David Prouty was improperly administered the oath of office and erroneously served as a Board member for 25 days.¹ As ranking members of the congressional committees tasked with ensuring that the NLRB faithfully complies with and fairly administers the *National Labor Relations Act* (NLRA), we are concerned that this error has the potential to undermine the Board's statutory obligations to administer the NLRA properly.

In light of the unusual nature of the NLRB's error and its potential implications for the integrity of the agency's activities, we sent the Board an oversight letter to explore this matter and to ensure that such an error does not happen again.² However, many questions remain surrounding the impacts of Member Prouty's improper service.³ To date, the NLRB has not fully addressed our concerns, and a better understanding of the legal and practical ramifications is needed.

We therefore request that GAO provide the following to determine whether the NLRB has complied with its obligations under the law thus far and whether it will comply in the future:

1. An analysis of the factual, legal, and administrative issues with respect to Mr. Prouty's 25-day participation as a Board member while lacking a presidential commission, and

¹ Letter from Lauren McFerran, Chairman, NLRB, to Sen. Patty Murray, Chairman, S. Comm. on Health, Educ., Lab., & Pensions et al. (Oct. 8, 2021), <https://www.nlr.gov/sites/default/files/attachments/pages/node-166/letter-to-oversight-committees-regarding-appointment-of-member-prouty.pdf>.

² Letter from Rep. Virginia Foxx, Ranking Member, H. Comm. on Educ. & Lab. et al. to Lauren McFerran, Chairman, NLRB (Oct. 27, 2021), https://republicans-edlabor.house.gov/uploadedfiles/10-27-2021_letter_to_chairman_mcferran.pdf.

³ See Letter from Lauren McFerran, Chairman, NLRB, to Rep. Virginia Foxx, Ranking Member, H. Comm. on Educ. & Lab. et al. (Dec. 6, 2021).

whether the NLRB's determination is correct that Mr. Prouty was a *de facto* employee during that time period, as well as clarification of the extent and applicability of the *de facto* employee doctrine;

2. A review of the work performed by Mr. Prouty and any assistants assigned to him in his capacity as a Board member during this period, and an analysis of whether his participation—while lacking a signed presidential commission—compromised the consideration of matters before the Board or violated the NLRA, including Section 4(a);⁴ and,
3. A review of the steps taken by the agency in identifying and addressing this error and recommendations on appropriate precautions the agency should implement to prevent such an error from taking place again.

If you have any questions, please contact Joe Wheeler with the House Committee on Education and Labor at (202) 225-4527 and Matt Mimnaugh with the Senate Committee on Health, Education, Labor and Pensions at (202)-617-5232 and Matt_Mimnaugh@help.senate.gov.

Sincerely,



Virginia Foxx
Ranking Member
House Committee on Education and Labor



Richard Burr
Ranking Member
Senate Committee on Health, Education,
Labor and Pensions

⁴ 29 U.S.C. § 154(a).